BOARD OF REVIEW DECISION

Title of Publication: Devil In The Rain

Other Known Title: Not Stated

Format: Video Recording VHS/NTSC

Director/Author: Harold Creg, Mike Cole

Producer/Publisher: Not Stated

Country of Origin: USA

Language: English

Applicant: Robert John Schofield

Classification: Objectionable.

Descriptive Note: Not Applicable

Display Conditions: Not Applicable

Date of entry in Register: 06 July 2006

Date of direction to issue a label: Not Applicable

OFLC No: 601586

Unexcised version of publication:

	Component	Running time
Feature:	Devil In The Rain	83.53
Other timed components:	Copyright / Age Restriction Notice	1.19
	FVM Presents Notice	0.23
	Outcast Productions Mail Order Notice	0.10
	Outcast Productions Director's Statement	0.25
Total running time:		86.10

Excisions: Not Applicable

Reasons for excisions:

Not Applicable

Summary of reasons
for classification:

Devil in the Rain is a video originating from the USA. The length of the main feature is 83.53 mins, and with various notices concerning copyright, age restriction and production notices the total running time is 86.10 mins

The feature is without a clear storyline but solely depicts explicit sexual activity between adult men. Depictions include anal intercourse, fellatio, masturbation and fisting. It also shows participants involved in sadomasochistic acts such as bondage and whipping – with the costumes reflecting the highly fetishistic nature of their activities. There are a number of examples of a man or group of men urinating on another, presumably as part of the dominant-submissive roles that are being acted out.

Section 3(2) of the Films, Videos, and Publications Classification Act 1993 (the Act)

Section 3(2) of the Act is a deeming provision. The Classification Office helpfully provides a definition of a deeming provision which is "the purpose of a deeming provision is to create a legal fiction: it has a defining function. It is used only if something is to be what it is not." Law Commission, Legislation Manual: Structure and Style (Report 35, 1996) para. 167.

Section 3(2) has a list of activities in paragraphs (a) to (f) which are deemed objectionable, if the publication promotes or supports, or tends to promote or support the activity.

<u>Section 3(2)(d)</u>

Under section 3(2)(d) of the Act, a publication is deemed to be objectionable if it "promotes or supports, or tends to promote or support, the use of urine in association with sexual conduct".

Devil in the Rain" has scenes within it which involve the use of urine in association with sexual conduct. The question is whether the activities in the video "promote or support, or tend to promote or support, the use of urine in association with sexual conduct".

The Applicant invites the Board to interpret section 3(2)(d) as having an additional requirement of having to be "injurious to the public good" pursuant to section 3(1).
The Applicant also submits that the section 3(2)(d) activity of urination in association with sexual conduct, is not per se illegal, and therefore it cannot be injurious to the public good. This was in contradistinction to the other section 3(2) activities, which are per se illegal.

The Board finds that as section 3(2) is a deeming provision, if a publication promotes or supports, or tends to promote or support, the use of urine in association with sexual conduct, then the section deems the publication to be "injurious to the public good" and hence "objectionable".

The fact that section 3(2)(d) is the only activity which is not illegal per se, has been recently considered by Parliament. In the report on the Films, Videos, and Publications Classification Bill presented to the House on 30 August 2004, Parliament retained section 3(2)(d) even though it did not describe a criminal offence.

The Board therefore does not accept the submission that as urophilia is not illegal, the plain words of the section should not be adhered to.

The feature *Devil in the Rain* contains six scenes, which depict men urinating onto each others bodies, faces and into their mouths. In each of the scenes the participants look stimulated by the activity and bystanders in the publication often masturbate while watching. There are several occasions when men urinate onto one man simultaneously, or take turns to urinate onto one man. All participants appear to enjoy the activity, with others masturbating, and making approving comments. The scene where a funnel is attached with a tube and inserted into a man's anus, which various men then urinate into, is received with considerable enthusiasm. There is one part of that scene when another man is grabbed and laid beneath the person who has had urine funnelled into him. That urine is then expelled onto the man below. When the man below rises, he playfully cuffs a couple of the bystanders, but even he does not look unduly unhappy with the process.

The Board finds that in *Devil in the Rain*, the participants show only positive responses to the use of urine in association with sexual conduct. The publication is a sexual aid for adult entertainment and as such by its very nature promotes or supports, or tends to promote or support, urination in association with sexual conduct. The Board find therefore that *Devil in the Rain* is "objectionable".

The Bill of Rights

The Board has considered the Bill of Rights Act and the five step approach set out in Moonen 1.

Excisions

Section 32 of the Act does not allow the Board to consider excisions to this publication.